

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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EVARISTO ESPINOBARROS BASURTO,	:	
<i>individually and on behalf of others similarly</i>	:	
<i>situated,</i>	:	
	:	
Plaintiff,	:	
	:	<u>ORDER</u>
- against -	:	
	:	19-CV-9792 (JLC)
DIALA DELI GOURMET CORP. d/b/a DIALA	:	
DELI, <i>et al.</i> ,	:	
	:	
Defendants.	:	
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JAMES L. COTT, United States Magistrate Judge.

The parties in this wage-and-hour case have consented to my jurisdiction under 28 U.S.C. § 636(c) (Dkt. No. 36) and have now submitted a joint “fairness letter” (Dkt. No. 34) and a fully executed settlement agreement (Dkt. No. 34-1) for my approval under *Cheeks v. Freeport Pancake House*, 796 F.3d 199 (2d Cir. 2015). Courts generally recognize a “strong presumption in favor of finding a settlement fair” in cases like this one brought under the Fair Labor Standards Act (“FLSA”), as they are “not in as good a position as the parties to determine the reasonableness of an FLSA settlement.” *Souza v. 65 St. Marks Bistro*, No. 15-CV-327 (JLC), 2015 WL 7271747, at *4 (S.D.N.Y. Nov. 6, 2015) (citation omitted). Moreover, as a result of defendants’ financial situation during the COVID-19 pandemic, the “potential difficulty in collecting damages militates in favor of finding a settlement reasonable.” *Lliguichuzhca v. Cinema 60, LLC*, 948 F. Supp. 2d 362, 365 (S.D.N.Y. 2013). *See also Hart v. RCI Hosp. Holdings, Inc.*, No. 09-CV-3043 (PAE), 2015 WL 5577713, at *10 (S.D.N.Y. Sept. 22, 2015) (significant “risk that plaintiffs would not

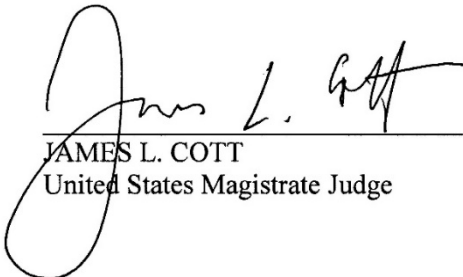
be able to collect, or fully collect, on a judgment” supported approval of settlement agreement, which “[g]uaranteed recovery from the other two defendants in the event that [one] prove[d] unable to pay the entire settlement amount”).

Having carefully reviewed the joint fairness letter submitted by the parties as well as the proposed settlement agreement, the Court finds that all of the terms of the proposed settlement (including the allocation of attorneys’ fees and costs) appear to be fair and reasonable under the totality of the circumstances (and in light of the factors enumerated in *Wolinsky v. Scholastic Inc.*, 900 F. Supp. 2d 332, 335 (S.D.N.Y. 2012)).

Accordingly, the proposed settlement is hereby approved. The parties are directed to file a fully-executed stipulation and order of dismissal with prejudice no later than **October 20, 2020**, as well as dismissal of the non-appearing defendants (as plaintiff indicated he would), otherwise the Court will simply direct the Clerk to close this case.

SO ORDERED.

Dated: October 6, 2020
New York, New York



JAMES L. COTT
United States Magistrate Judge